

**ORDINANCE NO. 2008-02-CM**  
**AN ORDINANCE TO AMEND THE ZONING ORDINANCE OF**  
**TIPPECANOE COUNTY, INDIANA, NO. 97-51-CM**

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF TIPPECANOE COUNTY, INDIANA, THAT THE UNIFIED ZONING ORDINANCE, BEING A SEPARATE ORDINANCE AND NOT PART OF A UNIFIED COUNTY CODE IS HEREBY AMENDED AS FOLLOWS:

**Section 1:** Change **UZO Section 1-10-2 Words and Terms Defined** to add and/or alter the following definitions:

**CLEARCUTTING.** The indiscriminate and broad removal of *trees*, *shrubs* or undergrowth with the intention of preparing real property for non-agricultural development purposes. This definition shall not include the selective removal of non-native *tree* and *shrub* species or hazardous *trees* when the soil is left relatively undisturbed; removal of dead *trees*; or normal mowing operations.

**COMMUNITY RATING SYSTEM (CRS).** The **CRS** was established by the Federal Emergency Management Agency (FEMA) to promote *flood plain* management above and beyond the minimum requirements of the National Flood Insurance Program (NFIP). As incentives, communities are awarded credits or points for implementation of new, **CRS** approved flood protection activities and educational outreach programs which help residents prevent or reduce flood losses. The higher the total number of points received by a community, the lower its **CRS** rating which results in a reduction of insurance premiums for insured residents.

**COMPENSATORY STORAGE.** An excavated volume of storage within a *flood plain* used to balance the loss of natural flood storage capacity when *suitable fill* or *structures* are placed in the *flood plain*. Such excavated volume has to be available to inundation by and accessible to flood waters.

**ELEVATION CERTIFICATE.** A form published by FEMA that is used to certify the *regulatory flood* elevation and the *lowest floor elevation* of useable space to which the building has been constructed.

**FILL IMPROVEMENT LOCATION PERMIT.** An *improvement location permit* issued by an *Administrative Officer* to add *suitable fill* to land in the *FP zone* or to land determined to be below the *regulatory flood* elevation as per 6-2-1-a-8 below.

**IMPROVEMENT LOCATION PERMIT.** Written permission issued by the appropriate *Administrative Officer* to construct, repair, alter, move or add to a *structure*, or change the condition of land, with the exception of adding *suitable fill*, as per 6-2-1-a-7 below.

**LOWEST FLOOR ELEVATION.** Lowest level of a **building**, including basement and crawl space.

**MARKET VALUE.** The value of a **building, structure, use, or mobile home**, excluding land value that is determined by a current appraisal prepared by a certified general appraiser, certified residential appraiser or a licensed residential appraiser.

**REGULATORY FLOODWAY.** The channel of a river or stream and those portions of the **flood plains** adjoining the channel which are reasonably required to efficiently carry and discharge peak flow of the **regulatory flood** of any river or stream and, is that area covered by floodwaters in significant downstream motion or covered by significant volumes of stored water during the occurrence of the **regulatory flood**.

**REGULATORY FLOODWAYS** shall be determined by the Federal Insurance Administration's Flood Boundary and Floodway Maps, (effective March 16, 1981 in Tippecanoe County, November 19, 1980 in Lafayette, and January 2, 1981 in West Lafayette and Battle Ground), and/or by designation in writing by the Indiana Department of Natural Resources, Division of Water. In small drainage basins the limits of alluvial soils, as verified by a soil scientist and mapped, and certified by a Registered Land Surveyor (RLS), shall be considered as delineating the **regulatory floodway**.

**REPETITIVE LOSS.** Flood related damages sustained by a **structure** on at least two (2) separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on average, equals or exceeds twenty-five (25%) of the **market value** of the **structure** immediately before the damage occurred.

**SUBSTANTIALLY DAMAGED.** A **non-conforming building, structure, use or mobile home** in the Flood Plain (FP) **zone** shall be considered to be **substantially damaged** when damage of any origin is sustained by the **building, structure, use or mobile home**, whereby the cost of restoring it to its pre-damaged condition would equal or exceed 50% of the **market value** of the **building, structure, use or mobile home** before the damage occurred.

**SUBSTANTIAL IMPROVEMENT.** For **structures** in the FP **zone** or determined to be on land below the **regulatory flood** elevation, any reconstruction, rehabilitation, addition, or other improvement of a **structure**, the cost of which equals or exceeds 50% of the **market value** of the **structure** before the start of construction of the improvement. This term includes **structures** that have incurred **repetitive loss** or have been **substantially damaged**, regardless of the actual repair work performed.

**SUITABLE FILL.** Fill material which is organic, stable, compacted, well graded, pervious, and generally unaffected by water and frost and is appropriate for the

purpose of supporting the intended **use**. Unsecured organic material such as **tree** trunks or wood chips shall not be used. Furthermore, material shall be devoid of contaminants, solid waste, trash, tires, concrete, asphalt, automobile parts or bodies and other similar material.

**WATERCOURSE.** Any river, stream, creek, brook, branch, natural or manmade drainageway in or into which stormwater runoff or floodwaters flow either continuously or intermittently.

**WATERSHED.** The region drained by or contributing water to a specific point that could be along a **watercourse**, lake or stormwater facility.

**Section 2:** Change **UZO Section 2-26-1** through **Section 2-26-5 Flood Plain Zones** to read as follows:

**2-26-1 INTENT:**

To protect lowland areas adjacent to lakes and ponds and areas that are within the **flood plain** of **watercourses** and **watersheds** all of which are subject to inundation and damage from flood waters up to the elevation of the **regulatory flood**.

**2-26-2 BOUNDARIES:**

- (a) **Flood Plains** exist adjacent to all natural and manmade **watercourses**, regardless of contributing drainage area or whether they have been defined or mapped. All land in a **flood plain** below the **regulatory flood** elevation (Amend 5) shall be contained in an FP **zone**. Boundaries of FP **zones** are shown on the official zoning maps as approved by the Indiana Department of Natural Resource's (IDNR) Division of Water and reflect the best available information. Each specific FP **zone** may not be shown on the zoning maps because of a lack of information and detailed studies. Inconsistencies in an FP **zone's** boundary may also occur because of previously approved flood certifications which are not shown on the zoning maps.
  - (1) In instances where there is a lack of information and detailed studies, the boundaries of the FP **zone** shall be established on an individual basis for land development by using a **regulatory flood** elevation authorized by either the Indiana Department of Natural Resources' (IDNR's) Division of Water or the **Executive Director** per UZO 2-26-17.
  - (2) Areas previously certified out of an FP **zone** that remain above the current **regulatory flood** elevation shall be incorporated by reference as being out of the official FP **zone**.
- (b) For land along **watercourses** with an upstream drainage basin of less than one square mile (small drainage basins), the **flood plain** boundary shall be as determined by the presence of alluvial soils on

site as verified by a Soil Scientist and mapped and certified by a Registered Land Surveyor (RLS). IDNR's Division of Water shall determine in writing that a **watercourse's** drainage basin is less than one square mile in area.

- (c) Establishing or changing these boundaries shall be done only through the procedures detailed in 2-26-17 below.

### **2-26-3 USES AND STRUCTURES PERMITTED WITHIN A FLOODWAY**

#### **FRINGE:**

The following **uses** and **structures** are permitted, provided that all local, federal and state permits have been obtained; all new improvements shall be anchored to prevent flotation, collapse or lateral movement of the **structure**. Anchoring shall be certified by a Professional Engineer (PE) or Licensed Architect prior to the issuance of a **Certificate of Compliance** except when waived by the **Administrative Officer**:

- (a) **primary uses**: see 3-2;
- (b) **structures** accessory to permitted **primary uses**, provided they do not obstruct circulation of water, threaten water quality, create erosion hazards or disrupt significant wildlife habitat, including:
  - (1) detached, unenclosed carports (no walls permitted) and the driveways serving them and unenclosed shelters (no walls permitted;
  - (2) mailboxes;
  - (3) **parking space** and **parking areas** and the driveways serving them;
  - (4) recreational equipment; and
  - (5) water wells and fountains;
- (c) except as provided in (g) below, free-standing decks on slopes no greater than 15%;
- (d) fences;
- (e) **streets** and bridges;
- (f) peninsulas created of fill material as long as **compensatory storage** requirements are met;
- (g) walkways; benches; informational displays; incidental **signs**; foot bridges; observation decks; duck blinds; wildlife management shelters and other water-related structures that are constructed on pilings to permit the unobstructed flow of water and preserve the natural contours of the **flood plain** on public park land, certification by a PE or a Licensed Architect required for foot bridges, observation decks and wildlife management shelters; and
- (h) enhancement of wetlands to improve wildlife habitat in accordance with a plan approved by the Indiana Department of Natural Resources (IDNR), the Indiana Department of Environmental Management (IDEM) and the Army Corps of Engineers.

#### **2-26-4 USES AND STRUCTURES PERMITTED WITHIN A REGULATORY FLOODWAY:**

Approval in writing from IDNR's Division of Water is required for any work in the **regulatory floodway** portion of the **flood plain** as is a local **improvement location permit**. A local **improvement location permit** will not be issued until IDNR's Division of Water approval has been received; state approval does not guarantee the issuance of a local **improvement location permit**. All new improvements shall be anchored to prevent flotation, collapse or lateral movement of the **structure**. Anchoring shall be certified by a Professional Engineer (PE) or Licensed Architect prior to the issuance of a **Certificate of Compliance** except when waived by the **Administrative Officer**. **Uses** and **structures** permitted within a **regulatory floodway** are as follows:

- (a) **primary uses**: see 3-2;
- (b) boat anchorages, moorings and piers;
- (c) same uses as in 2-26-3(b) above;
- (d) same uses as in 2-26-3(e) through (h) above; and
- (e) fences per IDNR's Division of Water's requirements.

#### **2-26-5 USES AND STRUCTURES PROHIBITED WITHIN EITHER A FLOODWAY FRINGE OR REGULATORY FLOODWAY:**

The following **uses** and **structures** are prohibited, even if federal and state approvals and/or permits have been obtained:

- (a) additions to existing **structures** that lie wholly or partially in the FP **zone** see UZO 4-4-3(b); and
- (b) **uses** not listed in 2-26-3, 2-26-4 or expressly permitted in 3-2 below.

**Section 3: Change UZO Section 2-26-17 Changing FP Boundaries and Section 2-26-18 Additional Restrictions** to read as follows:

#### **2-26-17 ESTABLISHING AND CHANGING FP BOUNDARIES:**

- (a) Where a current **Flood Insurance Rate Map (FIRM)** includes the base flood elevation at the property in question or when there is existing written documentation from IDNR's Division of Water (IDNR), a petitioner seeking to establish or change the boundaries of the FP **zone** described in 2-26-2-a above, shall provide the **Executive Director** with a scaled map of the property and a metes and bounds legal description. The base flood elevation on the **FIRM** map is equivalent to the **regulatory flood** elevation. The **Executive Director** shall then determine the **regulatory flood** elevation from the current **FIRM** map or best available written documentation from IDNR. In addition to establishing or changing the FP boundary on the zoning map, petitioner must also submit a **Letter of Map Amendment (LOMA)**, Letter of Map Revision Based on Fill (LOMR-F) or other required application to the Federal Emergency Management Agency to change the **FIRM**.

- (b) If advised by the **Executive Director** that there is no current **FIRM** map or other written documentation that includes the base flood elevation at the property in question, a petitioner seeking to establish or change the boundaries of the FP **zone**, shall provide IDNR with the necessary information per IDNR's requirements. IDNR shall then determine the **regulatory flood** elevation and **floodway** location for the property on the official zoning maps.
- (c) When seeking to establish or change the boundaries of FP **zone** described in 2-26-2-b above, the **regulatory flood** boundary in these small drainage basins may be adjusted by the **Executive Director**, upon written request, to the limits of the alluvial soils as verified by a Soil Scientist and mapped and certified by a Registered Land Surveyor (RLS). The mapped and certified area shall be considered as being the **regulatory floodway**.
- (d) The **Executive Director** may establish or change the boundary of the FP **zone** upon a petitioner providing:
  - (1) a written request that the FP boundary be changed;
  - (2) a letter from either IDNR's Division of Water or the **Executive Director** or their designee containing a **regulatory flood** elevation;
  - (3) a metes and bounds legal description of that portion of the property situated at, above or below the **regulatory flood elevation** determined by 2-26-17-a or 2-26-17-b above or that portion of the property containing alluvial soils per 2-26-17-c above, certified by a Registered Land Surveyor (certification statement required per Appendix H). (Amend 45); and
  - (4) a copy of the **Letter of Map Amendment (LOMA)**, Letter of Map Revision Based on Fill (LOMR-F) or other required application as submitted to the Federal Emergency Management Agency;
- (e) An area of land removed from an FP **zone** through the process outlined in 2-26-17-c or 2-26-17-d above, shall take on the zoning of adjacent areas on the zoning map. Where adjacent areas are characterized by more than one **zone**, the line dividing those **zones** shall be extended through the land being removed from the FP **zone**. These are exceptions:
  - (1) An area in the **floodway** that is filled to an elevation at or above the **regulatory flood** will still be considered part of the **floodway**, and shall retain its FP zoning.
  - (2) If an island of land is certified as having natural ground elevation at or above that of the **regulatory flood** and is in the **floodway fringe** and adjacent to no **zone** other than an FP **zone**, it shall be zoned AW.
  - (3) An area removed from an FP **zone** that is situated next to land previously removed from an FP **zone** shall derive its zoning from that previously removed land only if no other adjacent land is present.
  - (4) A PD **zone** shall not be considered an adjacent **zone** for

purposes of assigning a new classification to an area removed from an FP **zone**. Land removed from an FP **zone**, situated next to no **zone** other than PD and FP, shall be zoned AW.

- (f) Reclassification of land to some **zone** other than FP in and of itself provides no guarantee that an **improvement location permit** can be issued for any specific proposed **use**.

## 2-26-18 ADDITIONAL RESTRICTIONS:

To prevent harm to lands within or determined to be within the FP **zone**:

- (a) The **lowest floor elevation**, including basements and crawl spaces, of **buildings** permitted in adjoining **zones** on land within 100' of an FP **zone** shall comply with the **flood protection grade**; compliance shall be demonstrated on FEMA's **elevation certificate**;
- (b) Water wells, water lines and sewage facilities located within a **flood plain** shall be constructed to eliminate contamination of or by floodwater;
- (c) **Clearcutting trees** in the FP **zone** shall be prohibited.
- (d) Because **trees** and other vegetation help decrease erosion, lower water temperatures, capture pollutants and stabilize the velocity of flood waters, removing **trees** in the FP **zone** shall be limited to the following situations:
  - (1) **Trees** found to be dead or hazardous by a certified arborist, the IDNR District Forester, or an employee of the Soil and Water Conservation District (SWCD), the United States Department of Agriculture (USDA), or the National Resources Conservation Service (NRCS).
  - (2) As necessary for construction; repair or maintenance of public **roads**; or utilities or drainage **structures**.
  - (3) As part of an approved forestry operation meeting the standards of SIC 0811 that has approved **tree** protection, management and regeneration plans prepared by a certified arborist; or the IDNR District Forester; or an employee of the SWCD; the USDA; or the NRCS. **Tree** stumps from the removed **trees** shall be left on site in accordance with approved plans to reduce erosion.
- (e) Peninsulas created of **suitable fill** material shall be permitted within a **floodway fringe**, and may be permitted within a **regulatory floodway** as per 2-26-4 above. However, islands created of fill material shall not be permitted. The addition of **suitable fill** is subject to the following:
  - (1) For sites larger than 1 acre along **watercourses** with a drainage area equal to or greater than one square mile, no encroachment or addition of **suitable fill** within the **floodway fringe** or the **regulatory floodway** shall result in a loss of **flood plain** storage. Before receiving a **fill improvement location permit**, written documentation that the project complies with the adopted stormwater ordinances must be provided to the **Administrative Officer**, or

- (2) For sites less than 1 acre along **watercourses** or larger sites with a drainage area less than one square mile, no encroachment or addition of **suitable fill** within the **floodway fringe** or the **regulatory floodway** may increase the base flood elevation for that reach of stream more than one tenth of one foot. Before receiving a **fill improvement location permit**, documentation showing compliance shall be required in writing from IDNR's Division of Water for **floodways** or by certification from a Professional Engineer for the **floodway fringe** and for small drainage basins.
- (f) Additionally, if a **residential** or nonresidential **building** is to be constructed on **suitable fill** that raises the elevation of land out of the **floodway fringe**, the fill shall be placed in layers no greater than 1' deep before compacting to 95% of the maximum density obtainable with the Standard Proctor Test method. This procedure shall be certified by a Professional Engineer (Amend 41).
- (g) The addition and compaction of **suitable fill** shall precede all on-site digging.

**Section 4:** Change **UZO Section 3-2, Permitted Use Table** as described below:

Under SIC 08 – Forestry, add the following category of land use:

**083 Forest Nurseries and Gathering of Forest Products<sup>63</sup>**

Allow in all zones that SIC 08 is currently allowed in, except for distilling processes, which will not be allowed in the **FP zone**.

Add Footnote 63 – Distilling processes are not allowed in the **FP zone**.

Change **“Recycling Collection Facilities”** to disallow this use in the **FP zone**.

Change **SIC 4953 “Construction/Demolition disposal sites”** to disallow this use in the **FP zone**.

**Section 5:** Change **UZO Section 5-1 Supplementary Regulations** by making the following changes:

**Nonconforming Uses** Section 5-1-2 (d) (1): When a **nonconforming use** in the **FP zone** is **substantially damaged** by any means to the extent that repairs would equal or exceed 50% of the **market value** of that **use**, the **substantially damaged nonconforming use** shall no longer be permitted in the **FP zone**.

**Nonconforming Mobile Homes** Section 5-1-3 (c) (1): When a **nonconforming mobile home** in the **FP zone** is **substantially damaged** by any means to the extent that repairs would equal or exceed 50% of the **market value** of that

*mobile home*, the **substantially damaged nonconforming mobile home use** shall no longer be permitted in the **FP zone**.

**Nonconforming Structures** Section 5-1-6 (d) (1): When a **nonconforming structure** in the **FP zone** is **substantially damaged** by any means to the extent that repairs would equal or exceed 50% of the **market value** of that **structure**, the **substantially damaged nonconforming structure** shall no longer be permitted in the **FP zone**.

**Nonconforming Signage** Section 5-1-7 (c) (1): When **nonconforming signage** in the **FP zone** is **substantially damaged** by any means to the extent that repairs would equal or exceed 50% of the **market value** of that **signage**, the **substantially damaged nonconforming signage** shall no longer be permitted in the **FP zone**.

**Noncomplying Uses** Section 5-1-8 (d) (1): When a **noncomplying use** in the **FP zone** is **substantially damaged** by any means to the extent that repairs would equal or exceed 50% of the **market value** of that **use**, the **substantially damaged noncomplying use** shall no longer be permitted in the **FP zone**.

**Repairs & Maintenance** Section 5-1-9 (a)(2)(i): For properties in the **FP zone**, the cost shall not exceed 10% of the **market value** of that **use, structure or mobile home** in the **FP zone** in any 1-year period and cumulatively along with documented damage totals from previous events shall not equal or exceed 50% of the **market value** of that **use, structure or mobile home** over the life of the **use, structure or mobile home** in the **FP zone**; and

**Section 6:** Change **UZO Section 5-7 Construction on Land Fill Placed Within the Floodway** by making the following change:

If a **residential** or nonresidential **building** is to be constructed on permanent land fill that raises the elevation of land out of the **floodway fringe**, the fill shall be placed in layers no greater than 1' deep before compacting to 95% of the maximum density obtainable with the Standard Proctor Test method. The result of this procedure shall be certified by a Professional Engineer at the time the land is certified as being out of the **floodway fringe**.

**Section 7:** Change **UZO Section 6-2 PERMITTING PROCESS** by making the following changes:

**Improvement Location Permits** Section 6-2-1 (a) (7) and (a) (8): change the condition of the any land not determined to be in the **FP zone** for any **use** other than those included in SIC Groups 01 (Agricultural production -- crops), 02 (Agricultural production -- livestock), and 08 (Forestry.), unless construction plans have been approved under the *Unified Subdivision Ordinance* or drainage

plans have been approved by the appropriate jurisdiction; and change the condition of land determined to be in the FP **zone** for any **use** other than SIC Groups 01 (Agricultural production -- crops) and 02 (Agricultural production -- livestock).

**Improvement Location Permits** Section 6-2-1 (b) (1): However, an **improvement location permit** is not required for: a fence unless subject to UZO 2-26-4(e);

**Certificates of Compliance** Section 6-2-3 (d) (3): If no **improvement location permit** is required, a change in **use** only, within any one of the following permitted **primary uses** or from one to any other of these **primary uses** does not require a **certificate of compliance**:

- (1) 01 Agricultural production -- crops;
- (2) 02 Agricultural production -- livestock; and
- (3) 08 Forestry, except in the FP **zone** as per UZO 2-26-18-d and 3-2.

**Site Plan Requirements** Section 6-2-5 (a) **Common Elements** (16): if the site lies in, or within 100' of the FP **zone**:

- (A) the **flood plain** boundary and 100-year **flood elevation** (as determined by the Indiana Department of Natural Resources, Division of Water, or by the **Executive Director** from **Flood Insurance Rate Maps** or best available written documentation on record from IDNR where available) as part of the legal description, certified by a Registered Land Surveyor or Registered Professional Engineer, or alluvial soils as verified by a Soil Scientist and mapped and certified by a Registered Land Surveyor;
- (B) the **flood protection grade** and the area from the FP **zone** boundary where the **lowest floor elevation** of all **structures** must comply with the **flood protection grade**;
- (C) the **lowest floor elevation** of all proposed **structures**; and
- (D) the 25' setback from **watercourses** for **primary use** and **accessory buildings** as required by UZO Section 4-4-3(b).

**Section 8:** Change the UZO **Appendices** by adding Appendix H as follows:

## APPENDIX H: FLOOD PLAIN CERTIFICATION STATEMENTS

To establish that land is at or above the **regulatory flood** elevation:

I, insert name, a registered Land Surveyor in the State of Indiana, do hereby certify that the above described real estate does lie at or above the regulatory flood elevation (100 year frequency) of insert elevation and datum (e.g. NGVD datum) as stipulated by insert APC or IDNR letter information (e.g. the Indiana Department of Natural Resources for the Wea Creek in a letter dated August 21, 2001 in Wea Township, Tippecanoe County, Indiana).

Given under my hand and seal on insert date.

Seal & Signature Required.

To establish that land is below the **regulatory flood** elevation:

I, insert name, a registered Land Surveyor in the State of Indiana, do hereby certify that the above described real estate does lie below the regulatory flood elevation (100 year frequency) of insert elevation and datum (e.g. NGVD datum) as stipulated by insert APC or IDNR letter information (e.g. the Indiana Department of Natural Resources for the Wea Creek in a letter dated August 21, 2001 in Wea Township, Tippecanoe County, Indiana).

Given under my hand and seal on insert date.

Seal and Signature Required.

To establish limits of the **floodway** based on alluvial soils:

I, insert name, a registered Land Surveyor in the State of Indiana, do hereby certify that the above described real estate contains alluvial soils as identified in a soil report provided by insert Soil Scientist's name on insert date. The area described above forms the limit of the **regulatory flood**, all of which shall be considered the **regulatory floodway**.

Given under my hand and seal on insert date.

Seal and Signature Required.

This ordinance shall be in full force and effect from and after its passage.

(Adopted And Passed) ~~(Denied)~~ by the Board Of Commissioners of  
Tippecanoe County, Indiana, this 7<sup>th</sup> day of January, 2008.

VOTE:

yes

KD Benson  
KD Benson, ~~President~~ *Member*

yes

John Knochel  
John Knochel, Vice President

yes

Ruth E. Shedd  
Ruth Shedd, ~~Member~~ *President*

ATTEST:

Jennifer Weston  
Jennifer Weston, Auditor